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TO : General Counsel

DATE: 22 October 1948

FROM : Assistant General Counsel

STATINTL

SUBJECT: [REDACTED] Copyright Problems

Reference: Memo dated 13 October 1948 from the General Counsel to the Assistant General Counsel, subject as above.

The first problem to consider is what copyright protection, if any, is given to news of the day or to current topics having the character merely of press information by the various International Copyright Conventions. Great Britain, having been a signatory to the original International Copyright Convention signed at Berne in 1886 and its subsequent revisions at the Berlin Conference of 1908 and the Rome Conference of 1928, as well as a participant in the recent Conference at Brussels in June 1948, must first consider any liabilities in this field which arise because of these Conventions. As most of the countries of Western and Eastern Europe, exclusive of Soviet Russia, are members of these Conventions, they should be considered.

It is necessary to consider all three of the Conventions as they did not directly supersede each other. At various times countries which were signatory to the Berlin and Rome Conventions maintained reservations regarding certain later articles, which meant that the earlier article on the same subject remained in force and effect as regards the country maintaining the reservation.

The Berne Convention of 1886 highlighted the then rapidly developing schism between two conflicting forces, namely, the interests of the author in the full protection of his work on the one hand, as opposed to the interests of the public in the widest and freest dissemination of a work with the least possible restrictions on the other.

Article 7 of the Berne Convention distinguished very sharply as to copyright protection between news events of the day, current announcements, and market bulletins, which were considered to have no character of intellectual creation, and those articles in newspapers which had literary or artistic character. The prohibition against unauthorized reproduction of this latter work was not extended to items of current news. Article 7 specifically states that, -

"This prohibition cannot in any case apply to articles of political discussion, or to the reproduction of news of the day or current topics."

Stephen Ladas, in his work "The International Protection of Literary and Artistic Property" (1938), gives it as his opinion that under the Berne Convention such news items may be freely reproduced without indication of source, and believes that this article goes so far that the contracting countries are forbidden from protecting such articles even though their national laws attempt to do so.

After considerable discussion on the question of copyright protection for items of current news, the following text was adopted in Article 9 of the Berlin Convention of 1908:

"The protection of the present Convention does not apply to news of the day or to current topics having the character merely of press information."

According to the interpretation of Ladas (op. cit.) this leaves the legislation of each country free to provide for the suppression of abuses which might damage newspaper publishers. The interpretation of this section places press information outside the scope of the Copyright Convention as being rather a commercial matter subject for protection, if at all, under the laws of unfair competition. However, shortly after the Berlin Convention, at a meeting of The Hague Conference for the Revision of the International Convention on Industrial Property, an attempt to protect the commercial value of news was rejected as outside the scope of a Convention on Industrial Property as news should be considered literary property. However, this leaving of news as "an orphan of the storm", insofar as copyright protection was concerned, did not serve to have it included in subsequent Conventions.

Article 9, sub-section 3 of the Rome Convention of 1928, which is the Convention now in force until the necessary ratification of the Brussels Convention of 1948, reads as follows:

"The protection of the present Convention does not apply to news of the day or to miscellaneous news having the character merely of press information."

This merely substitutes the phrase "miscellaneous news" for

the previous usage of "current topics". Article 9, sub-section 3 of the Brussels Convention of June 1948 states:

"The protection of this Convention shall not apply to news of the day nor to miscellaneous information having the character of mere items of news."

The report by the Reporter-General, delivered at the plenary session of June 25, 1948 at Brussels, states:

"By not changing the existing test, the delegates wished to emphasize the fact that protection by the Convention does not extend to news of the day or reports which are merely press information. . . . As faithful interpreter of the obvious sentiments of a majority of the delegates at the Conference, I must admit that the growing importance of freedom of information and the authority of the press does not permit us to go any further."

The above remarks cover only the direct question of items of news and current topics. No attempt has been made to express an opinion on possible reproduction of speeches or lectures on various timely topics of interest which might conceivably be protected either under the Convention or domestic legislation. Article 2 bis of the Rome Convention reserves to the domestic legislation of each country the right to exclude, either partially or wholly, from copyright protection political discourses or discourses pronounced in judicial debates. The article further reserves to domestic legislation authority to enact the conditions under which such lectures and addresses may be reproduced by the press. This is, therefore, a problem which would necessitate the study of the domestic legislation of each country in turn as to the extent of such protection.

STATINTL

I think it would be a fair statement to make that, insofar as the International Conventions are concerned, there is no copyright protection for items of news. I think that this provision is of such a nature that we can disregard the problem of copyright in all of the signatory countries of the Conventions insofar as news is concerned. However, a problem of its protection under specific legislation or under the doctrine of unfair competition must be considered. In England, while there is no copyright protection for the news as such, there is copyright in the literary form given to the news, and the courts have protected news agencies from having information obtained by them disseminated by others as a property right. The doctrine of unfair competition in this connection is also applicable in France and Germany.